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THE BOARD OF TRANSPORT COMMISSIONERS FOR CANADA

A Review of its Constitution, Jurisdiction and Practice

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QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1957.

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THE BOARD OF TRANSPORT COMMISSIONERS FOR CANADA

by Rod Kerr, Q.C., its General Counsel

The Board of Transport Commissioners for Canada is in the second half-century of its existence. It has an extensive and interesting jurisdiction under the Railway Act, Transport Act and Pipe Lines Act over transportation by railway and by inland water, communication by telephone and telegraph, and transmission of oil and natural gas by pipe line, all vital to the economic life of Canada, and jurisdiction in particular respects under other public and private Acts of Parliament, including the following:

Bridges Act, R.S.C. 1952, c. 20.
Canadian National Railways Act, 1955, c. 29.
Canadian National—Canadian Pacific Act, R.S.C. 1952, c. 39.
Maritime Freight Rates Act, R.S.C. 1952, c. 174.
Radio Act, R.S.C. 1952, c. 233.
Telegraphs Act, R.S.C. 1952, c. 262.
St. Lawrence Seaway Authority Act, R.S.C. 1952, c. 242.
Re Toronto Harbour Commissioners, 1-2 Geo. V, c. 26.
Re New Westminster Harbour Commissioners, 3-4 Geo. V, c. 158.
Re The Burrard Inlet Tunnel and Bridge Company, 9-10 Ed. VII, c. 74; 1 Eliz. 11, c. 56.
Re British Columbia Telephone Company, 6-7 Geo. V, c. 66; 15 Geo. VI, c. 85.
Re Bonaventure and Gaspe Telephone Company, 6-7 Ed. VII, c. 64; 3-4 Eliz. II, c. 86.
Re Yellowknife Telephone Company, II Geo. VI, c. 95.
Re Canadian Marconi Company, 15-16 Geo. V, c. 77.
Re Bell Telephone Company of Canada, 11-12 Geo. VI, c. 81.
Re Gatineau Transmission Company, 17 Geo. V, c. 108.
Re Western Canal Company, 1-2 Geo. V, c. 149.
Re St. Mary River Bridge Company, 6-7 Ed. VII, c. 129.
Re Continental Heat and Light Company, 7-8 Geo. V, c. 75.
Re Dominion Electric Protection Company, 14-15 Geo. V, c. 102.
Re Canadian Dexter P. Cooper Company, 16-17 Geo. V, c. 23.

The purpose of this review is to outline in a broad way some important features of the Board's constitution, jurisdiction and practice, for its judicial and regulative functions are far greater than is generally realized.

The volume of the Board's work has increased greatly since the end of World War II. It has included the hearing and determination of a succession of applications for general freight rate increases, which resulted in the first major modification of freight rates since the 1920's, and of a succession of applications for general telephone rate increases, likewise the first for many years; a general freight rates investigation, which the Board was directed to make by Order in Council P.C. 1487 of April 7, 1948; equalization of freight rates pursuant to the national freight rates policy declared by Parliament by amendment to the Railway Act in 1951; the establishment and administration of

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a uniform classification and system of accounts and returns for railways and the institution of a statistical procedure for the Board itself, which were ordered by Parliament by the 1951 amendments to the Railway Act; the institution of a railway "waybill analysis" whereby the Board obtains and analyses valuable information respecting all-rail carload freight movements; the making of a new Canadian freight classification; and a Canada-wide investigation into railway-highway crossing problems, which resulted in increases in Parliament's annual appropriation to The Railway Grade Crossing Fund (which was $200,000 in 1947 and now is $5,000,000). The entry of Newfoundland into Confederation, with consequent jurisdiction by the Board in respect of its railways, the new jurisdiction over pipe lines conferred in 1949, and the unprecedented growth of the population and industry of Canada and the changes in her economy, have also given new and additional work to the Board during recent years.

A Court of Record

The Board was created and initially named the Board of Railway Commissioners for Canada by the Railway Act of 1903 and was given its present name by the Transport Act, 1938.

It is a Court of Record, constituted as such by section 9 of the Railway Act and so recognized by other courts. Sir Lyman P. Duff, C.J.C., in C.N.R. v Bell Telephone Company, (1939) S.C.R. 308, 50 C.R.T.C. 10 at 16, stated:—

> "The Board of Railway Commissioners is a statutory Court, but it succeeded to all powers, authorities and duties of its predecessor the Railway Committee of the Privy Council, and it is endowed with regulative powers (powers which in their nature are legislative) as well as large administrative powers."

In Toronto Ry. Co. v. City of Toronto, (1920) A.C. 426, 25 C.R.C. 318, the Privy Council also stated:—

> ".....The Railway Board is not a mere administrative body. It is a Court of Record....."

The Commissioners, like Judges, are removable only upon impeachment by Parliament and are therefore independent of the Crown or the Government: section 9(3). The latter words of this subsection, "upon address of the Senate and House of Commons", were substituted in 1919 for the words "for cause" and were copied from section 99 of the British North America Act, 1867, respecting tenure of office of Judges of Superior Courts.

By section 33(3) of the Railway Act the Board, as respects matters necessary or proper for the due exercise of its jurisdiction, has all such powers, rights and privileges as are vested in a Superior Court. Nesbitt, J., of the Supreme Court of Canada, in Montreal Street Ry. v. Montreal Terminal Railway, 36, S.C.R. 369, 4 C.R.C. 373, stated that the fullest possible effect should be given to the language of subsection (3) as to enforcement of orders.

An interesting sidelight is that although the Board has the powers of a superior court it has never found it necessary to exercise any of those powers in respect of contempt of court, although at times it has been the object of criticism and pressures, which, if directed at other superior courts, would probably have resulted in contempt of court proceedings. The Board dealt with one such incident in a case in 1919, Express Traffic Association v. Toronto, Montreal, et al., 25 C.R.C. 61 at 111, where a resolution condemning some of

the commissioners was published and an advertising campaign was carried on in an effort to influence the Board's decision. In his Judgment the Chief Commissioner said:—

> "Is is very difficult to account for the resolution condemning the commissioners who afforded the relief in 1917, then so highly praised. Although personally unaffected by and totally indifferent to the threats that have been made, it is obviously my duty, in the interests of the administration of justice, to call public attention to the methods adopted. Such methods never can succeed.
>
> A court which can be influenced by threats is, as a court, useless. A court which, on the one hand, either desires praise or fears censure, and is concerned in doing aught but what is the right thing to be done under the given circumstances before it, within its jurisdiction and subject to the law, is worse than no court at all . . . If force and threats are to influence the decision of the courts, they might as well be done away with at once and the ultimate force of a Bolsheviki rule adopted.
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> The matter is, of course, one which could be handled under the provisions as to contempt. This matter is pending, and any attempt such as is being made to subvert the proper disposition of justice by threat can, of course, be adequately dealt with. I am not very fond, however, of contempt proceedings. If a plain statement of the facts is not sufficient to bring home to those interested the mistake they have made, I do not think that any proceeding for contempt can bring about any really useful purpose. While, in an action involving only individual rights, relief might well be refused unless proper apology is made, this is not such a case. The rights of the citizens of Toronto cannot and ought not to be prejudiced by the actions of their perhaps self-constituted representatives, no matter how improper or mistaken such actions may be."

The status of the Board as a court has also been recognized by Speakers of the House of Commons. On one occasion, on a point of order raised when a member stated that the Board had failed in its duty, the Speaker ruled as follows:

> "The Board of Railway Commissioners is a court of record and therefore may not be attacked except by way of impeachment. This has been decided twice by this House within my knowledge." Debates of the House of Commons, 1928 Session, page 3106.

Paragraph 251 of Beauchesne's Parliamentary Rules and Forms, 3rd Ed., 1943, states: "The Board of Railway Commissioners is a court of record and therefore may not be attacked except by way of impeachment."

By section 50 any decision or order of the Board may be made a rule, order or decree of the Exchequer Court or of any superior court of any province, but the Board may also enforce its decisions and orders by its own action. In Re Toronto and Toronto Ry., 42 O.L.R. 82, 43 D.L.R. 739, an Order of the Board requiring the railway company to contribute to the cost of a bridge was made a rule of the Supreme Court of Ontario and the city proceeded to enforce it by execution, whereupon the company moved for an order staying execution on the ground, inter alia, that the order was not lawfully an order of the Supreme Court of Ontario. Middleton, J., in refusing the application, said:—

> "The Dominion Act, I think, makes the provincial courts, so far as their executive and ministerial officers are concerned, ancillary to the Court or Board constituted by the Act for the purpose of determining the rights which come within the purview of the statute. These rights, determined by the Dominion tribunal, are to be enforced by the machinery of the provincial courts. The decree of the Board on being presented to the registrar of the provincial court, is to be entered of record

and thus becomes automatically a judgment of the court, to be enforced in the same way as an ordinary judgment pronounced in due course. This is a simple and convenient mode of enforcing the judgment of the court . . . "

On appeal to the Privy Council the judgment of Middleton, J., was sustained: 25 C.R.C. 318, (1920) A.C. 426.

The Board has power, under section 54, to make its own rules of practice and procedure, and has done so. A copy of its Rules of Practice may be obtained without charge on application to the Secretary.

It may award costs of proceedings before it, but its practice is not to award costs: section 62.

It may enforce the attendance of witnesses and production of documents and may issue commissions to take evidence in a foreign country: section 63.

The finding or determination of the Board upon any question of fact within its jurisdiction is binding and conclusive: section 45.

No Order, decision or proceeding of the Board can be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari, or any other process or proceeding in any court, except on appeal to the Supreme Court of Canada upon a question of law, or a question of jurisdiction, or by the Governor in Council: section 53.

Although it is a court the Board differs from other courts in Canada in the following respects:—

(*a*) It has extensive regulative and adminstrative powers.

(*b*) It may determine, of its own motion, any matter that it may determine on application: section 36. Jurisdiction of the Board was upheld by the Supreme Court of Canada under this section when objection was made that the applicant in whose favour an order was made had no status before it: G.T.P. v. Purcell, 15 C.R.C. 314. See also Alberta Motor Transport Association v. Ry. Association of Canada, 54 C.R.T.C. 165.

(*c*) It has power to review, rescind, change, alter, or vary its orders and decisions and to re-hear an application: section 52. In St. Eugene de Guigues v. C.P.R. 46 C.R.C. 401, (1937) S.C.R. 451, the Supreme Court of Canada said that they had no doubt of the jurisdiction of the Board to direct and proceed with a re-hearing. The rule followed by the Board is that cases are not reopened unless doubt has arisen in the minds of the Board as to the correctness of the first conclusion by reason of new matter advanced on an application to re-open, or otherwise as to the soundness of the first conclusion, or when new evidence on a material issue can be presented: American Coal v. M.C.R., 21 C.R.C. 15; Canada Rice v. C.F.A., 36 C.R.C. 91.

(*d*) In many of the applications with which it deals it serves a dual purpose, for it must decide the case correctly as between the parties before it and it must also decide the case so as to best serve the public interest where such interest is a consideration to be taken into account—this is a forward looking function which differs from a purely judicial determination of present or past rights of the parties.

Its jurisdiction also overlaps to some extent the jurisdiction of other courts, the most important encroachment being by section 35 respecting certain agreements. In dealing with applications under this section the Board has held

that it should interfere with the jurisdiction of other courts only so far as is necessary: Red Deer Valley Coal Co. v. C.P.R., 55 C.R.T.C. 23; and that an agreement between the parties, although an element to be considered by the Board, is not as a rule binding upon the Board: N.Y.C.R. v. Stormont, 50 C.R.T.C. 235 at 243 and 244 and authorities there cited. Where the Board acts under this section, it follows principles different from those followed by provincial courts, for the Board has to make such order as to it may seem "reasonable and expedient".

Appeals from the Board's decisions

Under section 53 of the Railway Act (and where that section is applicable under other Acts), an appeal lies from the Board to the Supreme Court of Canada upon a question of law, or a question of jurisdiction, upon leave therefor being obtained from a Judge of that Court upon application made within one month after the making of the order or decision sought to be appealed from or within such further time as the Judge under special circumstances allows. No appeal lies from a refusal to grant such leave; Williams v. G.T.R., 36 S.C.R. 321, 4 C.R.C. 302. On an application for leave to appeal, consideration is given to whether it is fairly arguable that the decision of the Board is wrong on the question that the applicant raises: Halifax v. G.T.R., 44 S.C.R. 298, 12 C.R.C. 58; C.N.R. v. C.P.R., (1929) S.C.R. 135, 36 C.R.C. 76; Montreal v. C.P.R. 44 C.R.C. 100; Swift Canadian Co. v. Canadian Freight Association, 72 C.R.T.C. 279; International Refineries Inc. v. Interprovincial Pipe Line Co., June 1957.

As to the meaning of the phrase "question of law" as used in section 53, Mr. Justice Duff (as he then was) stated in C.N.R. v. Bell Telephone Company, above cited:—

> "The phrase 'question of law' which the Legislature has employed in this enactment is prima facie a technical phrase well understood by lawyers. So construed 'question of law' would include (without attempting anything like an exhaustive definition which would be impossible) questions touching the scope, effect or application of a rule of law which the Courts apply in determining the rights of parties; and by long usage, the term 'question of law' has come to be applied to questions which, when arising at a trial by a Judge and jury, would fall exclusively to the Judge for determination; for example, questions touching the construction of documents and a great variety of others including questions whether, in respect of a particular issue of fact, there is any evidence upon which a jury could find the issue in favour of the party on whom rests the burden of proof. The determination of such a question seldom depends upon the application of any principle or rule of law, but upon the view of the Judge as to the effect of the evidence adduced. Nevertheless, it falls within the category described by the phrase 'question of law.' My own opinion is that, having regard to the provisions of s. 44, the phrase 'question of law' in s. 52 does not embrace such questions: whether (that is to say) there is any evidence to support a given finding of fact."

There is also an appeal under section 53 by petition to the Governor in Council, except apparently from orders made under the Pipe Lines Act. The following statements from Orders in Council set forth principles adopted by the Governor in Council:—

> *Order in Council P.C.* 2518, *dated October* 15, 1918:
>
> ".....having perused the Petition and the reasons for judgment of the Board of Railway Commissioners for Canada, and having heard the argument of counsel for all parties, he is of the opinion that the Petition raises questions of jurisdiction

and of law and that an appeal lies from the Order of the Board to the Supreme Court of Canada under section 56, subsections 2 and 3 of the Railway Act, R.S.C. 1906, Chapter 37, and that in such cases it is desirable that the procedure provided by said Sections should be followed."

Order in Council P.C. 349, dated February 25, 1933:

"The Committee deem it proper, in connection with the said appeals, to call attention to the principles that have in the past been recognized as governing the exercise of the jurisdiction of the Governor in Council on applications made to him under the provisions of s. 52 of the Railway Act. As has been pointed out in previous Orders in Council 'the intent of the legislation is to invest His Excellency in Council with judicial powers by which he may in his discretion aid in securing and enforcing the provisions of the Railway Act, having due regard to the method of railway rate regulation by an independent commission which was the outstanding innovation in the Railway Act of 1903 and which has been preserved throughout succeeding revisions of the Act to the present time.' (Order in Council P.C. 2166, dated the 24th day of October, 1923).

Again, that 'one of the duties, if not indeed the principal task, of the Board of Railway Commissioners, is to determine upon application, what are fair and reasonable rates to be charged from time to time for the various services performed by public utilities under the jurisdiction of the Board.' (Order in Council P.C. 2434, dated the 6th day of October, 1920).

Further, that 'in appeals to the Governor in Council from the Board of Railway Commissioners a practice has grown up not to interfere with an Order of the Board unless it seems manifest that the Board has proceeded upon some wrong principle, or that is has been otherwise subject to error. Where the matters at issue are questions of fact depending for their solution upon a mass of conflicting expert testimony, or are otherwise such as the Board is peculiarly fitted to determine. it has been customary, except as aforesaid, not to interfere with the findings of the Board.' (Order in Council P.C. 1170, dated the 17th day of June, 1927.)

The Railway Act of 1903, under which the Board was created, constituted the Board a Court of Record with all the powers of such a Court as to the hearing of witnesses and obtaining of evidence. The members of the Board, in addition to their own long and varied experience, have available for the purpose of their investigations a permanent staff of expert officers and a complete system of records, which render that tribunal peculiarly qualified to deal with the intricate and highly technical subjects such as those involved in the said judgment from which the appeals were taken."

Practice and Procedure

The Board consists of a Chief Commissioner, Assistant Chief Commissioner, Deputy Chief Commissioner and three other Commissioners. They may sit together or separately and either in private or in open court: section 19. Two Commissioners form a quorum. The opinion of the Chief Commissioner or Assistant Chief Commissioner, when presiding, upon any question which in the opinion of the Commissioners is a question of law, shall prevail: section 12.

The great majority of applications and complaints are disposed of without being brought to a public hearing, but public hearings are held in various places throughout Canada as occasion and the convenience of the Board and the parties require. Interested parties appear personally or by counsel or other representatives.

Evidence at public hearings is given viva voce upon oath and is taken down in shorthand by court reporters.

The Board is not bound by the ordinary rules of evidence. In C.N.R. v. Bell Telephone Company, previously cited, the Supreme Court of Canada held:

".....The Board is not bound by the ordinary rules of evidence. In deciding upon questions of fact, it must inevitably draw upon its experience in respect of the matters in the vast number of cases which come before it as well as upon the

experience of its technical advisers. Thus, the Board may be in a position in passing upon questions of fact in the course of dealing with, for example, an administrative matter, to act with a sure judgment on facts and circumstances which to a tribunal not possessing the Board's equipment and advantages might yield only a vague and ambiguous impression."

Its Rules of Practice provide that, unless the Board directs or permits a departure therefrom in any proceeding, every proceeding shall be commenced by an application made to the Board in writing and shall contain a clear and concise statement of the facts, the grounds of application, the name and section of the Act under which it is made, the nature of the order applied for and the relief or remedy to which the applicant claims to be entitled; if the application contains a complaint against a provision in a tariff it shall give the C.T.C. number of the tariff and specify the provisions complained of: Rule 3. However, the Board permits many proceedings to be commenced by an application in the form of a letter or resolution where it sets forth necessary facts and the relief sought.

A respondent who intends to oppose the application shall send a written "Answer" to the Secretary and to the applicant; the Answer, like the Application, must be clear and concise; the time limit for delivery of the Answer is 20 days from the date of service of the Application where it arises in the Province of Ontario or Quebec and 30 days where it arises elsewhere; if a respondent does not deliver his Answer within the time limit the Application may be disposed of without further notice to him: Rule 4.

An applicant who receives an Answer may deliver a "Reply" thereto within 10 days: Rule 5.

The Board may enlarge or abridge the period for putting in Answer or Reply. No proceedings shall be defeated or affected by technical objections or defects in form: Rule 29.

The Board may at any time allow proceedings to be amended, and all such amendments shall be made as may, in the opinion of the Board, be necessary for the purpose of hearing and determining the real question in issue: Rule 28.

The Board's judgments are reported in Canadian Railway Cases and Canadian Railway and Transport Cases, of which there are 74 volumes to date. Its Judgments, Orders, Regulations and Rulings are printed fortnightly by the Queen's Printer, Ottawa, the current volume of J.O.R. & R. being No. 45.

JURISDICTION UNDER VARIOUS ACTS

The Railway Act

The Board, of course, has only such jurisdiction as is given to it by statute. Early in the Board's history, Killam C.C., stated in Duthie v. G.T.R., 4 C.R.C. 304:

> "The Board is purely a creature of statute. The general principle applicable to such a body is that its jurisdiction is only such as the statute gives by its express terms or by necessary implication therefrom.
>
> It was not created to supplant, or even to supplement, the Provincial courts in the exercise of their ordinary jurisdiction, but to exercise an entirely different jurisdiction, though, perhaps, occasionally overlapping that of the Provincial Courts."

Under the Railway Act the Board has jurisdiction to inquire into, hear and determine any application by any party interested complaining that any company or person has violated or failed to comply with the Railway Act or a Special Act or any order made thereunder, or requesting the Board to make any order or give any direction, leave, sanction or approval that by law it is authorized to make or give or with respect to any matter, act or thing that by the Railway Act or Special Act is prohibited, sanctioned or required to be done; and it has power to make orders and regulations generally for carrying the Railway Act into effect and for exercising jurisdiction conferred on the Board by any other Act.

It has jurisdiction, stated generally, over Dominion railway companies and in respect of the construction, maintenance and operation of railways, and approximately 57,000 miles of railway trackage, that are subject to the legislative authority of the Parliament of Canada, including matters of engineering, location of lines, crossings and crossing protection, operating rules, investigation of accidents (3289 were investigated in 1956), accommodation for traffic and facilities for service, freight and passenger tariffs and rates, and railway accounting.

The Board's approval must be obtained for route maps and plans, profiles and books of reference of railways, for highway crossings, for the opening of railways for traffic, for the abandonment of railway lines, closing of stations and numerous other things.

The public safety in operation of railways is a primary concern of the Board, and its staff makes inspections of crossings, bridges, track and structures, safety and protective devices, car equipment, locomotives, handling and storage of explosives and dangerous articles, signals, interlocking plants, and other railway facilities.

The Board may make orders and regulations in respect of operation and equipment of trains and "generally providing for the protection of property, and the protection, safety, accommodation and comfort of the public, and of the employees of the company, in the running and operation of trains and the speed thereof, or the use of engines by the company on or in connection with the railway".

The Board also has jurisdiction over other parties in some respects, for example, over persons who are parties to certain agreements with railway companies—section 35; over persons interested in or affected by an order of the Board directing or permitting any works to be constructed—section 39; over provincial railway companies where their railways cross or join a Dominion railway—sections 8 and 255; and over municipalities in respect of highway crossings—sections 258 to 262; and certain jurisdiction over telephones and telegraphs—section 380; placing of communication and power lines—sections 377,378; express traffic and tolls—sections 365 to 371; and tolls for the use of international bridges and tunnels—section 42. Its jurisdiction over telephones includes regulation of the telephone tolls of The Bell Telephone Company of Canada, British Columbia Telephone Company, Quebec and Gaspe Telephone Company and Yellowknife Telephone Company.

In certain respects the Board's functions are remedial only. It does not have managerial functions or responsibilities in connection with the business of the railways or other companies, but it may intervene when there is unjust discrimination or other improper action by management which is within the Board's power to remedy.

Freight rates are, of course, a major problem, too complicated to be dealt with in this article except briefly and in a very general way. The Board has power "to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require": section 328(5). This power is subject to special statutory provisions respecting the so-called "Crow's Nest Pass Rates" on grain and flour—section 328(6), agreed charges under the Transport Act, and rates on preferred movements under the Maritime Freight Rates Act. See also sections 317 to 324 as to equality of tolls and prohibition of unjust discrimination and undue preference, and section 336 which declares the national freight rates policy of equalization of freight rates. Section 328 gives the Board power to disallow any tariff that it considers to be unjust or unreasonable or contrary to any provision of the Railway Act and to require the railway company to substitute a tariff satisfactory to the Board; the Board may also prescribe other tolls in lieu of the tolls disallowed. The Board does not have power to order a refund of railway charges: In re Freight Tolls. 27 C.R.C. 458, Canadian Shippers' Traffic Bureau v. C.N.R., 32 C.R.C. 3; but it may make a declaratory order as to whether a rate charged was legal or not: C.P.R. v. Canadian Oil Companies, 17 C.R.C. 411 (1914) A.C. 1022; or as to what is a reasonable rate for the future; In re Freight Tolls supra.

Since the end of World War II general freight rate increases of 21, 20, 17, 9, 7 and 11 per cent were authorized by the Board on the railway traffic to which they applied. Two applications for general freight rate increases were dismissed. In those cases the Board used a "requirements method" under which the financial requirements of the rail enterprise of the Canadian Pacific Railway Company, as the "yardstick" for railway rates in Canada, were determined, following which adjustments in freight rates on a basis designed to afford Canadian Pacific an opportunity to earn those financial requirements from its railway operations, were authorized for all railways that were parties to the applications for increased rates. The method provides for a permissible level of net rail income to take care of amounts determined by the Board for (*a*) fixed charges of Canadian Pacific apportioned to its rail enterprise, (*b*), dividends

of 5% on paid-up common stock and 4% on paid-up preferred stock of the company, and (*c*) surplus or retained earnings, in addition to revenues for estimated operating expenses, depreciation and income tax.

Collisions between trains and motor vehicles at crossings are a source of considerable litigation in which orders and regulations of the Board may be relevant, for the Board may have imposed a speed restriction on train movements over the crossing concerned or ordered other special protective measures to be taken. Accidents are investigated by the Board for its own purposes, and reports or information furnished to the Board pursuant to the Railway Act respecting accidents are privileged by order of the Board. In Re Moor Lake Accident, 1909 Board's Annual Report, there is reported an application made by the Post Office Department and the representative of the engineer for a copy of the report of the Board's inspector, and Killam, C.C., held:—

> "that the inquiries and reports of its accident inspectors are made for the purpose of informing the Board in the public interest only, and in order to enable the Board to judge of the causes of accidents and the rules and precautions to be made and taken for the purpose of avoiding them in future, and not for the purpose of giving information to parties desirous of making claims against a railway company for injury to person or property; that this rule was adopted not only because the Board did not consider that its function was to obtain information for the purposes stated but also because the Board did not desire that railway officials should be deterred from giving information to the Board's officials through fear that it would be used in support of claims against the companies."

Two other aspects of the Board's jurisdiction under the Railway Act are of interest to the general public throughout Canada. One concerns abandonment of railway lines or train service, the other concerns the establishment and protection of railway-highway crossings.

A railway company may abandon operation of any line of railway with the approval of the Board: section 168 of the Railway Act and section 2(3) of Canadian National—Canadian Pacific Act. The rule followed by the Board in applications for leave to abandon such operation and applications involving serious curtailment or discontinuance of scheduled passenger train operations, was stated by the Board in V.V. & E. Ry. v. Princeton, 45 C.R.C. 178 at 197, as follows:—

> ....."But this Board has uniformly decided that loss sustained by the railway company arising from the operation of a line of railway is not of itself sufficient to justify the abandonment of the line. It must also be shown that the community resident in the territory affected, and the industries established therein, will not be unduly inconvenienced or prejudiced by such action on the part of the railway company. In other words, it must be demonstrated that the local community will not be unreasonably deprived of access to their properties and to markets and to shipping facilities for their produce either by railway, highway or other means of transport. The issue in each case where abandonment is sought resolves itself into a question of 'whether the loss and inconvenience to the public consequent upon the abandonment outweigh the burden that continued operation of the railway line involved would impose upon the railway company.' This was the decision pronounced by the Board in the recent case of C.N.R. v. Tweed (1935), 44 C.R.C. 53. In my opinion this decision constitutes a guiding principle for the determination of cases similar to that now under consideration."

Section 259 gives the Board power to authorize construction of a highway across a railway or a railway across a highway. Where construction of a new crossing is authorized, the Board usually directs that the cost be borne by the

party which establishes the crossing. Section 260 confers power to order that protective measures be provided at crossings, e.g., automatic signals, subways. Section 265 provides for grants from The Railway Grade Crossing Fund towards the cost of construction and installation, but not of maintenance or operation, of such protection in respect of level crossings that are at least three years old. Where automatic protection is ordered, the usual pratice in ordinary circumstances is to authorize a grant from the Fund of 60 per cent of the cost of installation and to direct the railway company to bear 15 per cent of the cost and the municipality 25 per cent. Where grade separation is ordered in respect of a level crossing, the grant may not exceed 60 per cent of the cost of construction, or $300,000.00, whichever is the lesser, and the remainder of the cost is apportioned among interested parties. Where the Board orders an existing inadequate grade separation to be reconstructed and improved, it may make a grant not exceeding 30 per cent of the cost, or $150,000.00, whichever is the lesser.

Section 39(2) provides that the Board may order by whom the cost and expenses of providing, operating and maintaining works ordered or permitted by it shall be paid, but the order for payment may be made only on a company, municipality or person interested in or affected by the order directing the works. In a case involving this section, C.P.R. v. Toronto Transportation Commission, 37 C.R.C. 203, (1930) A.C. 686, the Privy Council stated:—

> "Section 39 does not indicate any criterion by which it may be determined whether a person is interested in or affected by an order of the Railway Board. It does not even prescribe that the interest must be beneficial or that the affection must not be injurious. The topic has in a number of cases in the Canadian Courts been much discussed, but inevitably little elucidated. Where the matter is left so much at large, practical considerations of common sense must be applied, especially in dealing with what is obviously an administrative provision."

Sir Lyman P. Duff, C.J.C., after quoting that paragraph of the Privy Council, stated in C.N.R. v. Bell Telephone, previously cited:—

> "Subject to this, the Board is invested by the statute with jurisdiction and charged with responsibility in respect of such orders. The law dictates neither the order to be made in a given case nor the considerations by which the Board is to be guided in arriving at the conclusion that an order, or what order, is necessary or proper in a given case. True, it is the duty of all public bodies and others invested with statutory powers to act reasonably in the execution of them, but the policy of the satute is that, subject to the appeal to the Governor in Council under s. 52, in exercising an administrative discretion entrusted to it, the Board itself is to be the final arbiter as to the order to be made."

In 1954 the Board made a comprehensive report on the railway-highway crossing problem in Canada. Copies may be obtained from the Secretary.

The Transport Act, R.S.C. 1952, c. 271

Under the Transport Act the Board entertains applications for licences for ships to transport goods or passengers for hire or reward between places in Canada on the Great Lakes, the Mackenzie River and the Yukon, except goods in bulk on waters other than the Mackenzie River. Before granting a licence the Board must be satisfied that public convenience and necessity require such transport. It also has regulative powers over tolls to be charged for such transport. Under Part V as amended in 1955, "Agreed Charges" do not require the Board's approval, as was previously the case, but the Board continues

to have power to fix a charge for a shipper who is unjustly discriminated against by an agreed charge and it also has power to vary or cancel an agreed charge referred to it by the Minister of Transport or Governor in Council for investigation.

The Pipe Lines Act—R.S.C. 1952, c. 211

Construction of a section of an interprovincial or international gas or oil pipe line may not be commenced without leave of the Board: section 11. Applications for leave to construct pipe lines are usually set down for public hearing after notice to interested parties by mail and newspaper advertisement: section 12. Leave has been granted to construct such major pipe lines as the Trans-Canada natural gas line from Alberta to points in Ontario and Quebec; the Westcoast Transmission gas line from the Peace River areas to serve Vancouver and other points in British Columbia and markets in the United States; the Canadian portion of the Interprovincial oil line from Edmonton through the United States to points in Ontario; the Trans-Mountain oil pipe line from Edmonton through British Columbia to Vancouver and the international border; and the Trans-Northern products line from Montreal to Toronto, Hamilton and other points. Major considerations in such applications are public interest, financial responsibility of the company and the economic feasibility of the project.

The Board may make regulations providing for the protection of property and the safety of the public and of the company's employees in the operation of pipe lines: section 35.

Under Part II it may make orders and regulations with respect to all matters relating to traffic, tolls and tariffs of oil pipe lines, but it does not have similar powers over gas pipe lines.

It may declare an oil pipe line company to be a common carrier: section 39. In June 1957, Rand, J., of the Supreme Court of Canada, held in International Refineries Inc. v. Interprovincial Pipe Line Company that the Board has unfettered discretion to make or refuse to make such declaration.

Under Part IV the Board may prescribe a uniform system of accounts for pipe line companies and is in process of doing so.

Under other Acts, some public, others private, the Board has a variety of powers. One of these Acts, the Maritime Freight Rates Act, imposes continuous tariff work on the Board and its Traffic Branch, especially in connection with tariffs of tolls filed under section 8 of the Act by companies other than Canadian National Railways, for the Board is required to certify the normal tolls that but for the Act would have been effective and also to certify at the end of each calendar year the amount of the difference between the tariff tolls so filed and the normal tolls on traffic moved during the year by each of the railways, other than Canadian National Railways, under such filed tariffs. In 1956 the Traffic Branch checked approximately 1,400,000 rates and extensions under this Act. Under the remainder of these other Acts the Board is called upon to exercise jurisdiction less frequently than under the principal Acts above referred to and only one example of such jurisdiction will be mentioned here, namely, the fact that The Bell Telephone Company of Canada and the other telephone companies previously named do not have power to make any issue, sale or other disposition of their capital stock without first obtaining the approval of the Board of the amount, terms and conditions of such issue, sale or disposition.

The foregoing is a general outline of some features only of the constitution, jurisdiction and practice of the Board. Its responsibilities and powers are great and its decisions affect, directly or indirectly, practically every person in Canada. It was created as an independent judicial and regulative tribunal, to be a body of experts, competent for the purpose and acquiring experience through service in office, supported by the specialized training, experience and skill of a permanent staff devoting themselves to the public service of Canada, and it is charged with the task of exercising impartially, within its jurisdiction and subject to the law, the powers that Parliament sees fit to give to it.